

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	
Digital Audio Broadcasting Systems)	MM Docket No. 99-325
And Their Impact on the Terrestrial)	
Radio Broadcast Service)	

**COMMENTS OF THE NATIONAL ACADEMY OF RECORDING ARTS AND
SCIENCES, INC.**

The National Academy of Recording Arts and Sciences, Inc. (the “Recording Academy”), hereby submits its comments on the Further Notice of Proposed Rulemaking and Notice of Inquiry issued in this proceeding.¹

The Recording Academy

The National Academy of Recording Arts & Sciences, Inc. (the Recording Academy) is dedicated to improving the cultural condition for music and its makers. An organization of approximately 18,000 individual music professionals, the Recording Academy is internationally known for the GRAMMY Awards, a peer award that honors the best in recording arts and sciences. The Academy is also responsible for numerous national music-related outreach, educational, cultural, and human services programs serving the music community.

¹ Digital Audio Broadcasting Systems and their Impact on the Terrestrial Radio Broadcast Service (*Further Notice of Proposed Rulemaking and Notice of Inquiry*), FCC 04-99, released April 20, 2004 (“Notice”).

The Recording Academy Supports Digital Audio Broadcasting

The Academy strongly supports DAB services and believes it will benefit both the recording professionals it represents, as well as consumers and communities throughout the country. With the proper content and safeguards, DAB will be an effective tool to connect more artists to wider audiences, thus enriching the cultural landscape of our society, and providing increased opportunities for musicians, songwriters, singers, and producers.

The Commission Should Adopt a Local Programming Requirement for DAB

In paragraph 34 of the FNPRM, the Commission seeks comments on rules governing local programming on DAB services. The Academy believes that with this new technology, there is a window of opportunity to ensure vibrant radio services that reflect and meet the needs of their local communities—something that has been virtually eliminated on commercial analog stations.

On January 28, 2004, a Recording Academy delegation attended the Commission's Hearing on *Localism in Media* in San Antonio, Texas. Leading the delegation -- and serving as a scheduled hearing witness -- was Ray Benson, GRAMMY-winning founder of the band Asleep at the Wheel. Benson's remarks discussed the importance of local music programming to artists and communities, a practice no longer in effect in most markets. Benson stated:

When I started making records in the early '70s, things were a lot different. Stations had larger playlists that were sprinkled with records from independent, small, national and regional labels. People got to hear a variety of music, and regional stars were made all over the country. Some of these regional artists would break into the mainstream by having success one city at a time. I can cite numerous hit records that were started by one DJ having success with a record in his market thereby giving other markets the idea that this might work for them.

Today, such varied programming and local decision making rarely exists in commercial radio. Due to massive consolidation in the radio industry, playlists have become nationalized, with programming decisions (and even announcer voices) coming from markets thousands of miles from the station's market area. In short, analog commercial radio today rarely serves as an outlet for local talent

As suggested by responses to an email the Academy sent its membership last year, this is one of the most pressing issues facing music makers today. Narrow, national playlists reduce artist access to the airwaves, and reduce consumer exposure to quality recordings.

As the DAB rules are developed, there is an opportunity to reintroduce local programming into the airwaves. A reasonable local programming requirement could ensure continued availability of local information and local entertainment programming. The Academy proposes that the Commission work with it and other music, community and cultural organizations to establish a minimum local content requirement for digital broadcasts. If such minimum standards are not developed in these rules, DAB programming will suffer the same fate as analog broadcasts: service to the local community will be sacrificed.

Response to Notice of Inquiry (NOI) concerning Content Control

In the notice of inquiry portion of the Notice, the Commission requested comments on Digital Audio Content Control, noting that the Recording Industry Association of America (RIAA) has raised a concern about the potential for widespread

intellectual property theft through the use of advanced recording devices of digital broadcasts.

As a representative of thousands of recording professionals, the Academy shares the record labels' and RIAA's concern that without content controls, the music community—artists and companies—will suffer. Further, without fair compensation to creators, the public will also suffer, as economic realities will prevent artists from recording and thereby sharing their talent with consumers.

As stated above, the advent of digital audio broadcasting is a development welcomed by the recording community, as it has the potential to allow recording artists to reach a wider audience. Conversely, without content control, DAB services may have the ability to facilitate large-scale illegal copying which will further damage an industry already suffering from other forms of intellectual property theft. Illegal downloading and file sharing has had a major impact on record sales. The Academy's research on this subject illustrates that consumers either don't know or don't care about the legalities of copying music. (The Academy has instituted an educational website to help inform consumers about these issues, www.WhatstheDownload.com .)

Without content controls, future devices will likely be able to automatically record digital files of select artists or genres, thereby reducing sales and potential royalties to the artists who created the works. Since the recorded works are in digital form, they may be redistributed over the Internet or on another media. Ultimately, this will not only harm copyright owners and creators, but also DAB itself, as usage becomes a passive recording experience, no longer requiring the user to listen to the advertising which generates the revenue that supports the broadcast.

Commission adoption of a content control standard, such as an audio protection flag, will help ensure that DAB serves its intended purpose, and does not become a means of reducing fair compensation for the creators of the content.

The Recording Academy welcomes the opportunity to work with the Commission to provide recording artist input into DAB rules and standards as they are developed.

Respectfully submitted,

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